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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1134

ELBERT C. REIBERT, individually and on behalf of employees the previously existing Sinclair Oil Corporation, the employees Atlantic Richfield Company and employment agencies who provided temporary help for each corporation,
Petitioners,

v.

ATLANTIC RICHFIELD COMPANY and SINCLAIR OIL CORPORATION,
Respondents.

EN F. MANS, individually and on behalf of all persons employed Sunray D-X Oil Company and Sun Oil Company as of the date of merger of these two companies,
Petitioners,

v.

SUNRAY D-X OIL COMPANY and SUN OIL COMPANY,
Respondents.

L JEANNENE JOBE, individually and on behalf of employees the previously existing Amerada Petroleum Corporation, the ployees of the previously existing Hess Oil and Chemical, and the employees of Amerada Hess Corporation,
Petitioners,

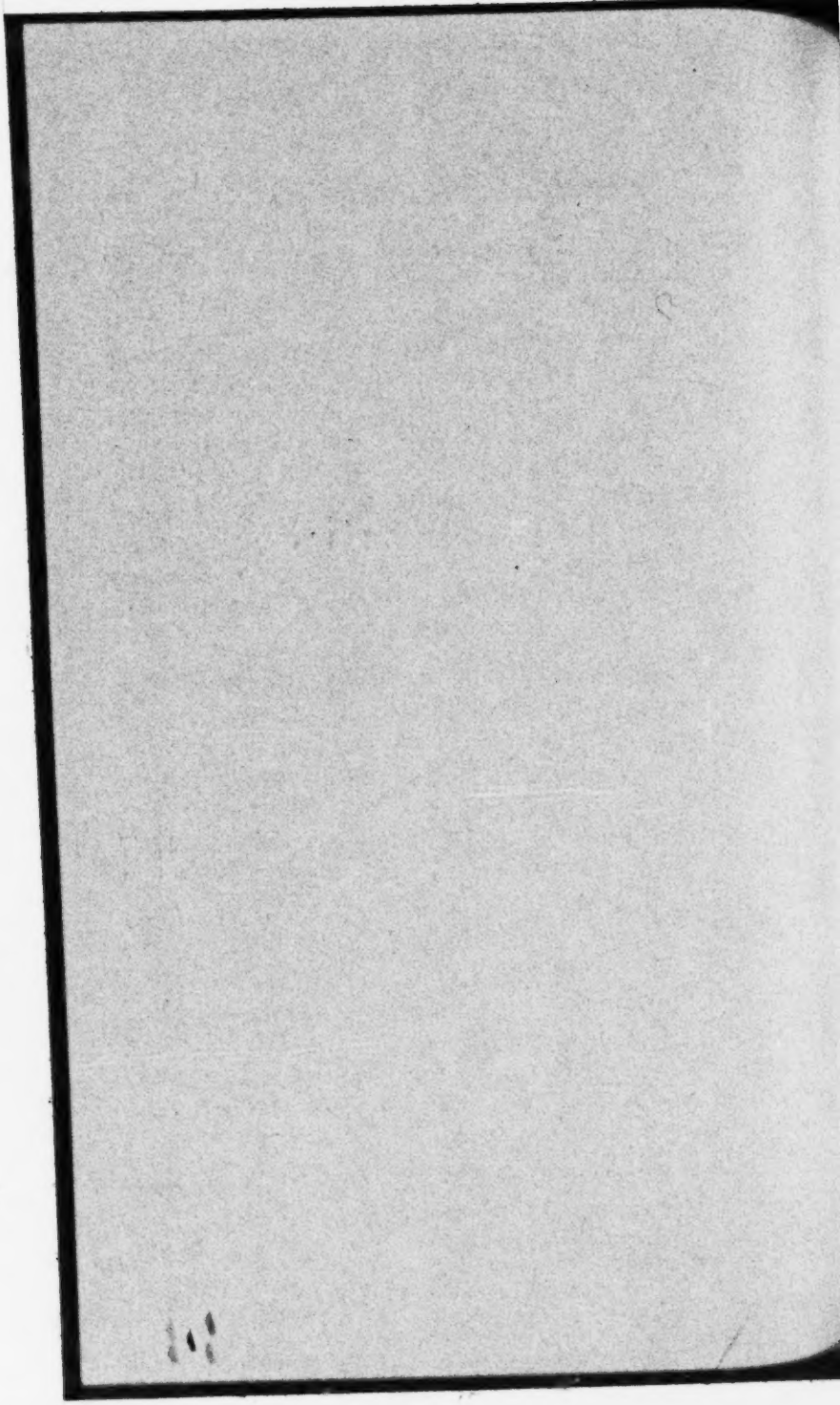
v.

AMERADA PETROLEUM CORPORATION, HESS OIL & CHEMICAL CORPORATION, and AMERADA HESS CORPORATION,
Respondents.

PETITION FOR REHEARING

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PETITION FOR REHEARING

On April 16, 1973, the petition for a writ of certiorari in this case was denied. This denial came as a shock for it left thousands of injured employees without any legal redress. Directness of injury was admitted by the wrongdoers, yet standing to sue denied. Unless this Court reconsiders its decision, the employees not only lose that which is due them under the antitrust statutes, but they will be called upon to pay the legal cost incurred by the corporate giants. This will mean that the victim will end up paying the cost of the law violator. An aberration created by this Court's denial of the writ sought "reflects no glory upon American jurisprudence." 75 Cong. Rec. 4915 (1932) (remarks of Senator Wagner).

The little man is expected to obey the law; if he doesn't, he goes to jail. Big oil companies are excused from any duty to obey the law. There is no pity, no mercy, no clemency for the little man who violates the law; there can be no excuse or justification. An explicit example of this is found in *Holder* v. *State of Oklahoma,* 488 P.2d 600 (Okla. 1971).

John Holder was a man who believed himself injured by the merger of Sun Oil Company and Sunray DX Oil Company. Instead of seeking judicial relief, Holder sent an extortion letter to Sun Oil demanding $75,000 as compensation for his injury. In the letter, Holder wrote that: "I am prepared and most willing to create multi-million dollar damage to your Tulsa Refinery at which I have concentrated my main effort." *Id.* at 602.

For his attempted extortion, John Holder was arrested, tried and convicted; and he received the maximum sentence of five (5) years in prison. On appeal, Holder sought

judicial clemency on the ground that he had honorably served his country in the military. Rejecting this argument, the Oklahoma court stated:

> "The fact that a man who commits the crime is an ex-soldier and honorably served his country is no excuse or justification for his commission of a crime. . . ." *Id.* at 602.

John Holder is now confined in prison because he violated the law. Sun Oil Company, whose merger with Sunray DX allegedly injured Holder, remains free to act outside the law. See: Tulsa World, September 2, 1971, p. 25A. This Court has taken a strong position against the use of violent tactics to right supposed wrongs. In the case of *In re Debs,* 158 U.S. 564 (1895), this Court observed that:

> "When the choice is between redress or prevention of injury by force and by peaceful process, the law is well pleased if the individual will consent to waive his right to the use of force and await its action." *Id.* at 583.

John Holder ignored the basic belief of any orderly society when he threatened Sun Oil with violence. He committed a wrong and was punished with a long prison sentence. If there is to be any lasting order of a society based upon fundamental concepts of justice and fairness, Sun Oil should likewise be required to answer for its wrongs. It should not be allowed to enter an illegal merger with Sunray DX and then be protected by a shield of judicial clemency.

The employees involved in the present case, injured by the same illegal act that allegedly caused injury to John Holder, have followed to the letter the teachings of this

Court in *In re Debs*. They have, as suggested in that case, patiently awaited the action of the law. But now after four long years, these employees have been turned away from the courts without any relief. Worse, they have not even been permitted to have the merits of their claim considered.

Not one single court has given any consideration to the sound legal arguments of the employees. The arguments have fallen on deaf ears. Without any rational explanation, these employees are told that they have no right to be in court, regardless of how much they were injured by the illegal acts of the oil companies. When the law on the subject appears to be so clear and relief is still denied, these injured employees can retain very little confidence in the judicial process.

Mr. Justice Frankfurter spoke strongly against the judicial activism that he considered a serious threat to the integrity of the Court. *Baker* v. *Carr*, 369 U.S. 186 (1962). He stated:

> "It may well impair the Court's position as the ultimate organ of 'the supreme Law of the Land' in that vast range of legal problems, often strangely entangled in popular feeling, on which this Court must pronounce. The Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction." *Id.* at 267.

It is no less judicial activism when the Court declines to give relief that is provided by statute. The withholding of this relief will jeopardize the sustained public confidence upon which this Court must rely just as quickly as the extension of relief beyond the boundaries established by Congress. Congress explicitly provided that employees had standing under the antitrust laws to challenge those

acts that injured jobs and job opportunities. Perhaps these injured employees will not prevail in the final outcome; however, they have a statutory right to have the merits of their claim considered by an impartial court. Confidence in this Court and in the total judicial process demands at the very least a high degree of consistency.

With all due respect toward this Court, the denial of the petition in this case is totally inconsistent with the principles enunciated in earlier decisions. It is these principles that provide some order to our system; that furnish necessary guidelines to allow lawyers to advise the people of their rights. Petitioners realize that the granting of a Petition for a writ of certiorari is discretionary with the Court. This should not mean, however, that a petition should be arbitrarily denied. When the guidelines for certiorari are satisfied, the petition should be granted.

Nothing more important than the issue involved in this case has ever come before this Court. Many significant decisions have of course been handed down in the areas of civil rights, criminal justice, and individual liberties. But compared to the rights sought to be defended in the present case even the civil rights cases appear minor. For what good does it do to give a man his civil rights against government intrusion when the people are committed to slavery of big corporations.

Because of a lack of antitrust enforcement, corporations are gaining control of the land upon which people can farm. Corporations own the factories and can give or take away the jobs of people. Since the days of *Bank of Augusta* v. *Earle*, 38 U.S. (13 Pet.) 277 (1839), when corporations gained the right to grow into interstate units, they have today grown into multi-national business em-

pires. Hopefully, the corporation has not yet reached the size and gained the power that would make them immune from legal attack. If they have, then our nation conceived upon the principle of justice is doomed.

The only hope that the people have is for the courts to follow the law as it is written and as read in light of the legislative purpose. If employees are to be enslaved by big corporations, it should be done by Congress and not the Court. This is why it is imperative that greater consideration be given to the petition filed in this case. At stake is the basic freedom of employees and the confidence and integrity that the people have in this Court.

In the past, this Court and most of the Justices have expressed support for the basic issue involved in this case. Petitioners are entitled to rely on this past experience, and to expect that relief will be granted or denied on the basis of this judicial experience. If no weight can be given to what this Court has told us in the past, counsel must then advise his clients that filing a petition with the Supreme Court is the same as going to Las Vegas and playing the roulette wheel. It would, however, be most unfortunate if a petition for certiorari were ever treated with so little respect.

Hope held by the injured employees over the last four years has been based on the notion that the Supreme Court Justices voted with a high degree of consistency. This consistency is missing in the present case which offers one of the very strong reasons for a rehearing and the granting of the petition.

If Mr. Chief Justice Burger refused to vote for the petition in the present case it is inconsistent with his support of the presumption of reviewability expressed in *Association of Data Processing Service Organization, Inc.* v.

Camp, 397 U.S. 150 (1970); and *Barlow* v. *Collins*, 397 U.S. 159 (1970). While serving on the D.C. Circuit, Mr. Burger expressed even stronger support for standing. In *Office of Communication of the United Church of Christ* v. *FCC*, 359 F.2d 994 (D.C. Cir. 1966), Judge Burger wrote: "Courts have resolved questions of standing as they arose." *Id.* at 1000. This can only be done if the Court agrees to review the case that raises a serious question of standing. Particularly pertinent to the present case are the remarks of Judge Burger to the effect that experience at times tells us that official enforcement agencies may not continue to be reasonably adequate. *Id.* at 1003. Based on his strong expressions in favor of standing, it would appear reasonable for the employees to anticipate a favorable vote from Mr. Chief Justice Burger.

If Mr. Justice Brennan did not vote to give the employees an opportunity to present their argument to the Court it would come as a great surprise to the employees since Mr. Justice Brennan has been one of the most consistent spokesmen in favor of standing and against the evils of monopolies. In his concurring and dissenting opinion filed in *Data Processing* and *Barlow* v. *Collins*, the most impressive thing said was that the issue of standing should be clearly separated from the merits of the case. Petitioners placed great reliance on the idea expressed by Mr. Justice Brennan that: "standing exists when the plaintiff alleges . . . that the challenged action has caused him injury in fact. . . ." This idea that a plaintiff should have his day in court was applied by Mr. Justice Brennan in his dissenting opinion filed in *Hawaii* v. *Standard Oil Company of Calif.*, 405 U.S. 251 (1972), an antitrust standing case. It is difficult to conceive how Mr. Justice Brennan could now decline to at least listen to the arguments of the employees who have been severely injured by illegal corporate mergers.

If Mr. Justice Stewart declined to vote for certiorari in the present case it is inconsistent with his concurring opinion filed in *California Motor Transport Co.* v. *Trucking Unlimited*, 405 U.S. 251 (1972), where the right of access to courts was recognized as part of the right to petition the government for a redress of grievances. At the present time, there is no group that needs access to the courts more than American workers.

Employees would expect Mr. Justice White to support the petition seeking standing for employees after he had earlier spoken so strongly in favor of private antitrust enforcement. *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 401 U.S. 321 (1971). Mr. Justice White had also earlier joined with Mr. Justice Brennan in *Data Processing* and *Barlow* v. *Collins*; the position defended in those cases was that a plaintiff ought to have the merits of his claim reviewed by the courts. Based on this precedent, Mr. Justice White could reasonably be expected to vote in favor of the employee petition.

Mr. Justice Marshall, as much as any of the other Supreme Court Justices, has made judicial expressions that would cause the employees to believe that he would support their petition in the present case. In the past, he has been a staunch defender of civil rights; he has vigorously supported the issue of standing, *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402 (1971); and he has looked upon the antitrust laws as the social instrument that Congress intended. In *United States* v. *Topco Associates, Inc.*, 405 U.S. 596 (1972), Mr. Justice Marshall described the antitrust laws as the Magna Charta of free enterprise that protect economic freedom and our free enterprise system. He did write the opinion that denied standing to the State of Hawaii; however, he called for private citizens to file private antitrust suits. *Hawaii* v.

Standard Oil Company of Calif., 405 U.S. 251 (1972). Finally and most important to the present case, Mr. Justice Marshall clearly recognized the standing of employees in *Flood* v. *Kuhn*, 407 U.S. 258 (1972), when he stated that the antitrust laws were as important to baseball players, football players, lawyers and doctors as they are to members of *any other class of workers*. *Id.* at 292.

Could Mr. Justice Blackmun vote against the petitioners who were seeking protection of their jobs against antitrust violations, when he made strong judicial expressions in favor of petitioners seeking to protect trees and the American wilderness? *Sierra Club* v. *Morton*, 405 U.S. 727 (1972). No one questions the importance of our environment and our great and beautiful wilderness. The greater resource is the lives of people which is the thing involved in the present case. We cannot long survive if we permit the devastation of either our natural or human resources. Mr. Justice Blackmun closed his dissenting opinion in the *Sierra Club* case with the observation of John Donne. The words "any man's death diminishes me, because I am involved in Mankinde" are far more appropriate in the present case. When you take away the job of a man, you take away his life.

The point to be made by the above discussion is that there is great inconsistency between the judicial expressions of our Supreme Court Justices and their vote to deny the petition in the present case. If we are to have confidence in our judicial process, we ought to be able to place greater reliance on what has been done and what has been said. It has been on this basis that the employees injured by the oil companies' flagrant antitrust violation have been able to retain any ray of hope over the past four years. During their struggle to obtain some legal redress they manifested a high degree of faith in our system of justice.

But not only have these American workers failed to receive any sort of legal redress; they have been denied a day in Court without ever being heard. The oil companies will remain free to further gouge their workers and the American consumer. This unhappy conclusion cannot give Americans much hope for the future; they must accept as a fact of life that the individual who violates the law will be sent to prison while the corporate law violator suffers no penalty.

The employees who have been terminated as a direct result of illegal oil company mergers strongly urge this Court to reconsider their arguments. The human resources involved in this case deserve the closer attention of this Court.

Respectfully submitted,

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